



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Honorable Geo. H. Sheppard
Comptroller of Public Accounts
Austin, Texas

Dear Sir:

Opinion No. O-5730

Re: Whether, under the stated facts, Alamo Loan Service Co. is subject to the tax levied on money lenders by Art. 7047, Subdiv. 25, V. A. C. S.

Your request for opinion dated March 31, 1944, has been received and considered by this department. We quote from your letter as follows:

"There are a number of loan companies in Texas, that transact their business in the following manner:

"An agreement is entered into, between the loan company and the person who wishes to borrow money, which provides that the loan company is to act as the borrower's agent and attorney-in-fact, for the purpose of negotiating a loan for the borrower. The agreement also authorizes the loan company to accept payments, from the borrower, on the loan and remit said payments to the lender. The borrower agrees to pay the loan company a service charge for procuring the loan from some individual, firm or lending agency.

"Attached is a copy of the form of agreement, between the loan company and the borrower, and also copies of the type of receipt used by the loan company, when accepting payments on the loan, from the borrower, to be forwarded to the lender.

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"You will also find attached a letter addressed to Mr. Leroy Gentry, Allen Building, Dallas, Texas, (Owner of the Alamo Loan Service Co.) by his Attorney, Mr. Carl O. Mays, of Dallas. Mr. Mays states, in his letter that, in his opinion, the Alamo Loan Service Company is not subject to the State "Money Lenders" Occupation Tax, for the reason that the Alamo Loan Service Company represents, and is agent for the borrower, in all of their transactions, and does not represent the lender.

"I will appreciate your opinion as to whether or not a person, firm, association of persons, or a corporation, who uses the method of doing business, as stated above, is subject to the tax as levied by Article 7047, Subdivision 15, R.C.S., of 1925."

The receipt you refer to reads as follows:

"Dallas, Texas, _____ 194_____
Received of _____ to be for-
warded to Tri-State Finance Co., Inc.
Dollars \$ _____ to be applied as follows:
\$ _____ on interest \$ _____ on
principal. Balance of principal \$ _____.

ALAMO LOAN SERVICE COMPANY"

Article 7047, V.A.C.S., provides:

"There shall be levied on and collected from every person, firm, company or association of persons, pursuing any of the occupations named in the following numbered subdivisions of this article, an annual occupation tax as follows:

"

"15. Money Lenders--From every person, firm, association of persons, or corporation

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whose business is lending money as agent or agents for any corporation, firm or association, either in this state or out of it, an annual tax of One Hundred Fifty Dollars (\$150.00)"

It is clear from the wording of the statute, and under the holding of Means v. State, 75 S.W. (2d) 953, that a person lending his own money is not subject to the tax under this section, as it is provided herein that only a person, firm, association of persons, or corporation "whose business is lending money as agent, etc.," is so subject.

Alamo Loan Service Co. does not purport to lend its own money. The form of agreement which is attached to your letter is called an "Agreement of Employment", and clearly makes the Company the agent of the borrower for the negotiation of a loan.

However, the Company is not by this agreement prevented from acting as agent for the lender also. The Company acts as agent of the lender in finding a borrower for the money; in collecting payments on the loan; and in forwarding the payments so collected to the lender. It is, in our opinion, a money lender within the meaning of said Subdivision 15, and therefore is subject to the tax.

Trusting that we have answered your inquiry, we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Arthur L. Moller*
Arthur L. Moller
Assistant

W. J. Blackburn
1944
Attorney General of Texas

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